IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2006

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Second Appeal No. 335 of 1996
-o-

Ramayee .. Appellant
(Plaintiff)

Versus

1. Sakthivel
2. Adhisivan
3. Vivekanandan
4. S. Appaji
5. Muthuswamy .. Respondents
(Defendants 3 to 5 and 1)

Appeal under Section 100 CPC against the decree and judgment dated 19.09.1995 made in A.S. No. 56 of 1994 on the file of Subordinate Judge, Dharapuram reversing the decree and judgment dated 30.04.1993 made in O.S. No. 562 of 1988 on the file of District Munsif, Dharapuram.

For Appellant : Mr. M.V. Krishnan
For Respondents : Mr. P. Srinivas for R1

JUDGMENT

Originally, the Plaintiff/appellant herein has filed O.S. No. 562 of 1988 against the defendants therein for permanent injunction, which was dismissed by a decree and Judgment dated 21.08.1991. Aggrieved by the same, the appellant has filed an appeal in A.S. No. 64 of 1991 before the first appellate Court, which was allowed by a decree and judgment dated 07.04.1992 thereby the matter was remanded back to the trial court for fresh consideration. On remand, the trial court heard both sides and decreed the suit by a decree and judgment dated 30.04.1993. Aggrieved by the same, the defendants 2 to 5 have preferred A.S. No. 56 of 1994 before the Sub-court, Dharapuram which was allowed, hence the present second appeal has been filed by the Plaintiff.

2. The case of the plaintiff/appellant herein was that the suit property belonged to the second defendant, who has executed a usufructory mortgage in favour of one Nachimuthu Gounder and received a sum of Rs.10,000/-. The said Nachimuthu Goudner, in turn

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made over the same to the first defendant on 27.08.1974 on receipt of consideration. On the same day i.e., 27.08.1974, the plaintiff and the first defendant entered into a lease agreement and from the said date, the plaintiff has been in possession of the suit property as a lessee and she is entitled to protection as contemplated under the Tamil Nadu cultivating Tenant Protection Act. It is alleged that on 01.01.88 and 08.11.1988, the defendants attempted to interfere with the possession of the suit property and forced her to deliver vacant possession of the suit property, hence, the suit was filed.

3. The case of the first defendant/4th respondent herein was that Nachimuthu Gounder was a lessee under the second defendant, later, the second defendant executed a Usufructory mortgage in his favour, thus, the said Nachimuthu Gounder has been in possession of the suit property and cultivating the same even prior to the said usufructory mortgage. Thereafter, the said Nachimuthu Gounder made it over to the first defendant, who in turn entered into a lease agreement with the plaintiff and by virtue of the same, the plaintiff has been in possession of the suit property as a tenant.

4. The case of the second defendant/predecessor of 2nd respondent herein is that though usufructory mortgage deed was executed by her in favour of Nachimuthu Gounder, possession was not delivered to him. The Plaintiff is the second wife of her husband Muthusamy. The first defendant/4th respondent herein is none other than the brother of the plaintiff/appellant herein. Due to personal animosity against the second defendant, the first defendant/4th respondent herein had created the made over in favour of the plaintiff/ appellant herein, however, the possession of the suit property was not at all handed over by her either to Nachimuthu Gounder or to the first defendant/4th respondent herein or to the plaintiff/appellant at any point of time.

5. Before the trial court, the Plaintiff has marked Exs. A1 to A19 and examined herself as PW1 and one Thiruman as PW2. The defendants marked Exs. B1 to B30, second defendant, first defendant and the third defendant were examined themselves as Dws 1 to 3 and one Shanmugam and Periyasamy were examined as Dws 4 and 5.

6. The trial court, taking into consideration of the oral and documentary evidence came to the conclusion that the plaintiff/ appellant herein is a cultivating tenant and is in possession of the suit property; that the defendants 2 to 5 attempted to interfere with her possession, hence, she is entitled to protection under Law. The trial court further found that the plaintiff/appellant continued her possession as lessee under the first defendant/4th respondent herein; that the second defendant executed usufructory mortgage to Nachimuthu Gounder and received a sum of Rs.10,000/- and the said amount was not repaid by her; that the possession of the suit property was delivered to the first defendant/4th respondent herein, who in turn handed over the possession to the plaintiff/appellant and she has been in possession and enjoyment of the suit property as a lessee and decreed the suit.

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7. The first appellate Court considering the oral and documentary evidence, particularly Ex.B20 dated 17.07.1969, usrfructory mortgage executed by second defendant in favour of Nachimuthu Gounder, Ex.B21 dated 27.08.1974, made over executed by Nachimuthu Gounder in favour of the first defendant/4th respondent herein, Ex.B22 dated 27.08.1974, the agreement between 1st defendant/4th respondent herein and the 2nd defendant and found that though Nachimuthu Gounder has made over to the first defendant, the plaintiff has failed to prove that possession was handed over by Nachimuthu Gounder to the first defendant/4th respondent herein who in turn delivered the possession to her and she is in possession of the suit property and allowed the appeal.

8. This second appeal is admitted on the below mentioned substantial questions of Law:-

> "i) Whether the lower appellate Court ought to have accepted the entry of the plaintiff as a cultivating tenant under Tamil Nadu Agricultural Land Record of Tenancy Act, 10 of 1969 was conclusive as held by this Honourable Court in the decision reported in AIR 1980 SC 1980?
>
> ii) Whether the lower Appellate Court ought to have followed the decision reported in 1973 TNLJ 448, AIR 1980 Kerala 224 and 1979 (1) MLJ 439 and granted the injunction in favour of the plaintiff?
>
> iii) Whether the learned Subordinate Judge has exceeded the scope of Section 96 of CPC in reversing the finding of facts that the plaintiff was in possession of the suit properties as given by the trial court, a practice deprecated by Supreme Court in the decision reported in 1951 SC Page No.120?

9. In order to support the claim that the plaintiff/appellant herein was in possession of the suit property, she relied on Ex.A11 to A16, house tax receipts issued by Dharapuram Municipality, which are admittedly in the name of the second defendant and a plea was also taken by the second defendant that the said receipts were missing when it was kept in the bureau. In view of the fact that the said receipts are in the name of the second defendant, the first appellate Court came to the conclusion that the plaintiff/appellant herein was not in possession of the suit property at all. Ex.A18 dated 30.04.1991 is an order passed in RTR No.3/88 in favour of the appellant, which was marked to show that she was in possession of the suit property, but the same was not pleaded by her in the plaint besides that the first defendant/4th respondent herein is none other than her brother and both of them have clandestinely obtained that order, hence, the same will not bind the second defendant. Considering the same and also Exs. B1 to B14 i.e., the documents which are commencing from 1985, which are relied on by the second defendant to show that she has not parted with the possession of the

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suit property, the first appellate Court held that the possession of the suit property was with the second defendant all along. Exs. B15 to B18 are relating to fasli 1393, Ex.B19, Chitta relating to Patta No.116 for the fasli 1397 wherein the name of the second defendant is found mentioned. Ex.B25 relates to fasli year 1392; Ex.B27 relates to fasli 1394; Exs. B26 to B28 relating to fasli 1392 to 1394 all in the name of the second defendant. The above said documentary evidence prove that the second defendant was in possession of the suit property even prior to filing the suit and also pending the suit.

10. In so far as the first substantial question of law is concerned, no such judgment of the Honourable Supreme Court is found in AIR 1980 SC 1980. The crux of the said question of law is the entry of the appellant name as a cultivating tenant is conclusive one or not. No doubt, jurisdiction of the civil court is expressly excluded to determine whether a person is a cultivating tenant or not. The object of The Tamil Nadu Agricultural Land Record of Tenancy Rights (Amendment) Act 1972 Act as well as the provisions contained in Section 3 (2) therein would makes it clear that that the record officer or the appellate authority or the revisional authority has to determine the following matters namely (1) the survey number or sub-division number, extent and local name, if any, of the land let for cultivation by a tenant; (2) the name and address of the landowner; (3) the name and address of the intermediary, if any; and (4) the name and address of the tenant cultivating the land. It may be prima facie stated that these are the four matters which are required to be determined by the Record Officer or the appellate or revisional authority under the provisions of the Act. A controversy may arise whether the land has been let out for cultivation by a tenant at all. The question to be considered is whether the determination of that controvery is within the exclusive jurisdiction of the authorities functioning under the Act so as to bar the jurisdiction of the civil court under Section 16-A of the said Act. From the language of Section 3 (2) of the Act, it cannot be stated that the determination of that controversy is within the exclusive jurisdiction of authorities functioning under the Act, though the determination of that controversy is basic and fundamental to the exercise of the jurisdiction by the authorities. The very object of the Act is to provide for the preparation and maintenance of record of tenancy rights in respect of agricultural land and therefore, there is no tenancy in respect of a land, there is no question of any further particulars being determined. The controversy is that the land has not been let for cultivation by tenant, there is no question of there being any tenancy right in respect of the said land and consequently there is no question of record officer ascertaining or determining any further particulars in this behalf. Therefore, such controversy is not within the exclusive jurisdiction of the authorities. In this context, it would be useful to refer the decision of a full bench of this Court reported in (Periathambi Goundan v. The District Revenue Officer, Coimbatore and others) AIR 1980 Madras 180 wherein in Para No. 38, it was held thus:-

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> "38. ....In all matters which may arise incidental to the determination of the matters mentioned in Sec. 3 (2), the Record Officer or the appellate or revisional authority cannot be said to have exclusive jurisdiction and with reference to those matters, the jurisdiction of the civil court cannot be said to have been barred or ousted under S. 16-A of the Act."

It is the case of the appellant that the land has not been let out for cultivation by the respondents, hence, the civil court is competent to decide the issue, thus, the first substantial question of law is answered against the appellant.

11. In so far as the second question of law is concerned, though the appellant relied on the decisions reported in 1973 TNLJ 448, AIR 1980 Kerala 224 and 1979 (1) MLJ 439, they are not relevant to the facts and circumstance of this case. In this case, the oral and documentary evidence let in by the respondents makes it clear that the appellant herein was not in possession of the suit property, hence, the substantial question of law is also answered against the appellant.

12. The last substantial question of law is concerned, whether the first appellate Court exceeded the scope of Section 96 of CPC in reversing the finding of facts that the plaintiff was in possession of the suit properties as given by the trial court. it is well settled that the first appellate Court can go into the questions of fact and appraise the evidence available on record. A court of appeal can interfere with the granting or refusing to grant injunction when the order passed is arbitrary or it is passed by not taking into the relevant consideration. In this case, the first appellate Court has taken into consideration Exs. B11 to B14; Exs.B15 to B18 which stands in the name of the second defendant to reverse the decree and judgment passed by the trial court, which failed to consider it, hence, the third question of law is also answered against the appellant.

13. Taking into consideration the oral and documentary evidence, the first Appellate Court came to the right conclusion that at the time of filing the suit, the plaintiff/appellant herein was not at all in possession of the suit property and set aside the decree and judgment passed by the trial court, hence, the same is confirmed.

14. In view of the above said discussion, this Court is of the view that the decree and judgment passed by the first appellate Court in A.S. No. 56 of 1994 is perfectly valid and interference of this Court is not warranted.

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15. In the result, the second appeal is dismissed as devoid of merits. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Subordinate Judge, Dharapuram.

2.The District Munsif, Dharapuram.

3. The Section Officer
Vernacular Records Section
High Court of Madras
Madras - 600 104

+1cc to Mr.P.Srinivas, Advocate Sr 54332
+1cc to Mr.M.V.Krishnan, Advocate Sr 54506

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